

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11/03/2004

CORAM

THE HONOURABLE MR.JUSTICE M. CHOCKALINGAM

SECOND APPEAL NO.416 OF 1993

P. Muthukaruppan .. Appellant

-Vs-

Palaniammal .. Respondent

This second appeal is preferred under Section 100 of CPC against judgment and decree dated 10.10.1991 made in AS No.109 of 1990 on the file of the learned Subordinate Judge, Ramanathapuram at Madurai reversing the judgment and decree dated 31.7.1987 made in OS No.373 of 1983 on the file of the learned District Munsif, Sivagangai.

!For Appellant : Mr.A.Sasidharan

^For Respondent : Mr.Irwin Aaroon
of M/s. Paislobo & Alvares

:JUDGMENT

The defendant, in a suit for declaration and consequential permanent injunction in respect of the suit properties, who suffered a decree in AS No.109 of 1990, wherein the judgment of the trial court was modified, has filed this second appeal.

2. The following facts are noticed in the pleadings of the parties:

The suit schedule immovable properties originally belonged to one P.Muthukaruppan, the father of the plaintiff, who purchased from another Muthukaruppan by a sale deed dated 23.6.1951. The father of the plaintiff executed a mortgage in respect of item Nos.1 to 5 in favour of the plaintiff and her first husband Veera Adaickan. The father of the plaintiff executed a sale deed under Ex.A.1 on 22.1.1952 in respect of all the 14 items in favour of the plaintiff and her first husband Veera Adaickan, and thus, the plaintiff and her first husband took possession of the property and they were enjoying the same also. The said Veera Adaickan had no other heirs except the plaintiff. Thus, on his death, all the properties were devolved upon the plaintiff. The defendant is the close relative of the plaintiff. On the death of her first husband, the plaintiff married one Muthu, son of Chinnakaruppan and he has also left 10 years before. The plaintiff reposed

confidence on the defendant and entrusted all the original documents and records pertaining to the properties with the defendant. Taking advantage of the situation, the defendant claimed title to the property. Under the stated circumstances, the plaintiff has issued notice on 21.4.1983, which resulted in a reply on 5.5.1983 from the defendant containing false allegations, and hence, there arose a necessity for filing the suit.

3. The suit was defended by the appellant/defendant stating that it is true that the plaintiff's father was the original owner of all the items of the property; that it is not correct to state that the said Muthukaruppan executed mortgage deed in favour of the plaintiff and her first husband nor he executed any sale deed in respect of all the 14 items of the property on 22.1.1952 in favour of the plaintiff and her first husband; that the plaintiff has suppressed the fact that she had one brother by name Karuppiah; that the defendant is the grant son of one Adaikappan, the brother of Muthukaruppan; that on 23.7.52 when the defendant was a minor, the said Muthukaruppan executed a settlement deed in favour of the defendant and his junior paternal uncle and from that time onwards, they have been in enjoyment of the properties and on his death, the defendant was the only heir to succeed the properties, and thus, the defendant, who got the possession of the property, has been in enjoyment of the same and has been paying tax all along, and thus, he was entitled to the property, and hence, the suit was to be dismissed.

4. The trial court framed necessary issues, tried the suit and gave declaration in favour of the plaintiff in respect of item Nos.1 and 2 and dismissed the suit in respect of items 3 to 14 recording the finding that the defendants became entitled to those items by way of an adverse possession. An appeal was preferred by the plaintiff before the Sub Court, wherein decree was granted in respect of items 3 to 14 also. Aggrieved, the defendant has brought forth this second appeal before this Court.

5. At the time of admission, the following substantial questions of law were formulated by this Court for consideration:

1) Whether the appellate court has justified in holding that the appellant had not established that his possession been adverse to the respondent especially when the respondent herself had admitted that she was not in possession of the property?

2) Whether or not Ex.B.3 to B.14 would corroborate and establish the fact that the possession of appellant had been adverse to the respondent for the requisite period of 12 years?

6. Heard the learned counsel for the appellant/defendant and also the learned counsel for the respondent on those contentions.

7. The plaintiff, who is the respondent herein, filed a suit for declaration in respect of 14 items of the landed properties shown in the plaint and also for consequential permanent injunction. It is not in controversy that all the 14 items of properties originally belonged to Muthukaruppan, the father of the plaintiff. The trial court has granted the relief in respect of items 1 and 2 of immovable property attached to the plaint, but the defendant did not prefer any appeal therefrom, and thus, that part of the decree granted by the trial court has become final. The trial court rejected the plaintiff's case for declaration in respect of items 3 to 14 only on the ground that the defendant has been in possession of the property for more than three decades, and thus, he has perfected title by adverse possession, and hence, the plaintiff's claim for declaration in

respect of items 3 to 14 was to be rejected. Aggrieved, the plaintiff took it on appeal before the first appellate court, wherein the judgment of the trial court was reversed and a decree was granted in favour of the plaintiff, which is the subject matter of challenge before this court, at the instance of the defendant.

8. Admittedly, as pointed out above, items 1 to 14 originally belonged to one Muthukaruppan, the father of the plaintiff. According to the plaintiff, her father has executed a sale deed on 22.1.1952 under Ex.A.1, a registered one in respect of all the 14 items of the suit properties. A perusal of the deed would clearly reveal that the plaintiff and her first husband were put in possession of the property. In order to hold contra to the tenor of the document, no circumstance is available or shown by the defendant/appellant. What were all contended by the defendant before the courts below and equally here also as appellant is that the appellant has been in possession and enjoyment of the property for more than three decades pursuant to the settlement deed executed in his favour.

9. The first appellate court has clearly pointed out that the alleged Ex.B.1 settlement deed has come into existence on 23.7.1952, but the sale deed was executed in favour of the plaintiff on 22.1.1952, and thus, the original owner of the property Muthukaruppan by executing a sale deed on 22.1.1952 became divested of his ownership and title to the property, and thus, he had no right or interest or title in the properties enabling him to execute the settlement deed under Ex.B.1, and hence, Ex.B.1 could not confer any right to the defendant. The trial court has negated the case of the plaintiff in respect of item Nos.3 to 14 on the ground of adverse possession erroneously.

10. A careful reading of the written statement and the additional written statement would indicate that the defendant has averred that he was in possession of the property; that nor has he pleaded that he was in possession of the property in the hostile attitude to that of the plaintiff; that nor has he averred that his possession was open, continuous and uninterrupted more than the statutory period; that nor has he stated when the alleged adverse possession was commenced, and thus, this court is able to notice a thorough lack of pleadings in respect of adverse possession. Even without necessary and requisite pleadings, the trial court has taken an erroneous view that the defendant has perfected title to the items 3 to 14 by way of adverse possession. The first appellate court has discussed the matter in extenso and has found that the defendant has not proved that the document filed and relied on by him was pertaining to the property in question. The first appellate court has also found that the defendant has not proved the continuous possession for a period of 12 years, and thus, in view of the lack of necessary and requisite pleadings and the necessary evidence that the defendant was in open, continuous and uninterrupted possession for more than the statutory period of 12 years, it would be highly difficult to accept the case of the appellant that he has perfected title by adverse possession, and thus, the first appellate court was perfectly correct in setting aside the judgment of the trial court and has granted the relief in respect of item Nos.3 to 14 also in favour of the plaintiff.

11. This Court is unable to notice any reason to interfere in the judgment of the first appellate court. Hence, this second appeal fails and the same is dismissed. No costs.

Index : Yes

Internet : Yes

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To

1. The Subordinate Judge,
Ramanathapuram at Madurai
2. The District Munsif, Sivagangai
3. The Record Keeper, VR Section,
High Court, Madras

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